

STATE OF CALIFORNIA  
BUSINESS, CONSUMER SERVICES AND HOUSING AGENCY  
DEPARTMENT OF BUSINESS OVERSIGHT

In the Matter of: ) CRD NO. 6363  
)  
THE COMMISSIONER OF BUSINESS ) CONSENT ORDER  
OVERSIGHT, )  
)  
Complainant, )  
)  
v. )  
)  
AMERIPRISE FINANCIAL SERVICES, INC., )  
)  
Respondent. )  
\_\_\_\_\_ )

The Commissioner of Business Oversight (Commissioner) and Ameriprise Financial Services, Inc. (Ameriprise) (collectively, “Parties”) enter into this Consent Order based on the following:

**RECITALS**

A. The Department of Business Oversight, (Department) conducted an investigation of Ameriprise Financial Services, Inc. (Ameriprise) to determine whether non-traded real estate investment trust (REIT) sales transactions executed by Ameriprise, during the time period beginning January 1, 2008 through present (Relevant Time Period), violated state law.

B. Ameriprise responded to the Department’s inquiries, provided documentary evidence, and assisted the Department in its evaluation of whether any executed sales transactions (Sales Transactions) were sold in violation of (a) the prospectus standards of the specific REIT, (b) state concentration limits specified in the prospectus, or (c) Ameriprise’s own guidelines for the sale of Alternative Investments, including but not limited to non-traded REITs.

C. The investigation identified that Ameriprise sold non-traded REITs to

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1 certain investors in California, in excess of at least one of the above-stated prospectus standards or  
2 Ameriprise's own guidelines, which the Commissioner alleges constitutes a violation of  
3 Corporations Code section 25218 as specifically defined by California Code of Regulations, title 10,  
4 section 260.218.4, subsection (c).

5 D Ameriprise, without admitting or denying the findings of fact and conclusions of law  
6 contained herein, voluntarily consents to the entry of this Consent Order, and waives any right to a  
7 hearing or to judicial review regarding this Consent Order.

8 **FINDINGS OF FACT**

9 A. Ameriprise, CRD # 6363, is an entity currently registered as a broker-dealer firm in  
10 California.

11 B. Ameriprise is also an investment adviser registered with the United States Securities  
12 and Exchange Commission.

13 C. Ameriprise has a principal place of business located at 5221 Ameriprise Financial  
14 Center, Minneapolis, Minnesota.

15 D. Ameriprise currently maintains branch offices in California.

16 E. Between January 1, 2008 and December 31, 2014, Ameriprise offered multiple non-  
17 traded REITs through its branch offices in California.

18 F. Non-traded REITs are specifically identified by Ameriprise internal guidelines as a  
19 form of "Alternative Investment."

20 G. Non-traded REITs generally carry significant investor risk in that they present  
21 liquidity risk and often have lengthy holding periods, restricted redemption options, and variable  
22 withdrawal periods determined by issuer specific programs.

23 H. During the Relevant Time Period, certain non-traded REIT prospectuses contained  
24 specific heightened requirements for sales to California residents including, but not limited to,  
25 maximum concentration and minimum net worth.

26 I. Ameriprise maintained Compliance Policy Manuals and/or Compliance Policies and  
27 Procedures (collectively the "Compliance Manuals") throughout the Relevant Time Period.  
28

1 J. The Compliance Manuals provide specific requirements regarding the sale of  
2 alternative investment products to investors including non-traded REITs.

3 K. In October 2007, Ameriprise's Compliance Manuals provided: "All sales must meet  
4 the minimum suitability requirements and minimum purchase amounts listed in the prospectus  
5 and/or established by Ameriprise Financial."

6 L. Ameriprise's Compliance Manuals also provide baseline suitability concentration  
7 requirements based on a client's age, investment period, experience, and risk tolerance.

8 M. As of April 13, 2009, consistent with the North American Securities Administration  
9 Association's published non-traded REIT suitability guidelines, Ameriprise Compliance Manuals  
10 increased annual gross income and net worth requirements, providing: "Clients under age 80 must  
11 have either (1) a minimum annual gross income of \$70,000 and a minimum net worth (excluding  
12 home, home furnishings and automobiles) of \$70,000 or (2) a minimum net worth of \$250,000....  
13 If the client is age 80 or older, they must have a minimum net worth (excluding home, home  
14 furnishings and automobiles) of \$500,000."

15 N. Ameriprise's Supervisory Procedures for the Relevant Time Period also contain  
16 requirements regarding non-traded REITs-including the review of all REIT transactions by  
17 registered principals.

18 O. Pursuant to the Commissioner's investigation, the Department reviewed 23,437  
19 transactions and found that on at least 90 occasions Ameriprise Representatives sold non-traded  
20 REITs to California customers in excess of concentration limits or net worth requirement specified  
21 in the non-traded REITs prospectus requirements or in violation of Ameriprise's internal policies.

22 **CONCLUSIONS OF LAW**

23 1. At all times relevant, California law required Ameriprise to implement an adequate  
24 supervisory system regarding the sale of non-traded REITs reasonably designed to achieve  
25 compliance with Corporations Code section 25218 and California Code of Regulations, title 10,  
26 sections 260.218.2 and 260.218.4. The law required that Ameriprise enforce its own written  
27 procedures regarding the sale of non-traded REITs and comply with any restrictions on sales  
28 specified in the prospectus of any non-traded REITs.

2. Based upon the above facts, between January 1, 2008 and December 31, 2014, Ameriprise failed to implement an adequate supervisory system that was reasonably designed to achieve compliance with Corporations Code section 25218 as specifically defined by California Code of Regulations, title 10, sections 260.218.2 and 260.218.4, regarding its sale, through California representatives, of non-traded REITs on at least 90 occasions.

3. Between January 1, 2008 and December 31, 2014, Ameriprise failed to enforce its written procedures to supervise the activities of its registered representatives in violation of Corporations Code section 25218 as specifically defined by California Code of Regulations, title 10, section 260.218.4, subsection (c).

### **TERMS AND CONDITIONS**

On the basis of the Commissioner's Findings of Fact, Conclusions of Law, and the consent of Ameriprise to the entry of this Consent Order, the following relief is appropriate and in the public interest.

#### **IT IS HEREBY ORDERED:**

4. Desist and Refrain Order. Ameriprise shall desist and refrain from further violations of the Corporations Code section 25218 as specifically defined by California Code of Regulations, title 10, sections 260.218.2 and 260.218.4 with regard to the sales of non-traded REITs that were unsuitable to investors and lack of adequate supervision of those sales.

5. Investigative Costs. Ameriprise shall pay investigative costs incurred by the Department in this matter within ten (10) business days of the Effective Date of this Consent Order, as defined in paragraph 15 herein, in the amount of \$115,000.00. This amount shall be paid by check made payable to the "Department of Business Oversight" and mailed to the attention of: Accounting, Department of Business Oversight, 1515 K Street, Suite 200, Sacramento, California 95814. Notice of payment shall be made concurrently to Senior Counsel Kirk Wallace at Department of Business Oversight, One Sansome Street, Suite 600, San Francisco, California 94104.

6. Remediation. Ameriprise shall offer remediation for the 90 non-traded REITs sold by Ameriprise to California clients in violation of the above referenced rules and guidelines

1 identified in Appendix 1 to this Consent Order, regardless of whether the shares of the non-traded  
2 REIT are presently held in an Ameriprise account or the individual or entity no longer resides in  
3 California (Eligible California Investors).

4 7. Definitions. The term “remediation or remediate” as used in this Order means

5 a. The offer by Respondent to purchase from customers, as further defined herein,  
6 their presently held non-traded REIT shares at the purchase price as reflected in the  
7 corresponding non-traded REIT offering documents; or

8 b. If the non-traded REIT is no longer held, the offer to remediate shall be based on  
9 a methodology to be agreed to by the Department that takes into account any losses to the  
10 investor due to (i) a previously sold or redeemed non-traded REIT shares; (ii) non-traded  
11 REITs that are now publicly traded themselves or are now subsumed within a publicly  
12 traded security; and (iii) non-traded REITs that have had a special or extraordinary capital  
13 distribution.

14 8. Form of Offers to Remediate. Ameriprise or its designee shall send an offer of  
15 remediation to Eligible California Investors identified in Appendix 1 (Offer Letter). Ameriprise  
16 shall provide to the Department within thirty (30) days of the effective date of this Consent Order  
17 or the finalization of Appendix 1, whichever is later, a draft of the Offer Letter, for approval by the  
18 Department. Ameriprise will send the approved Offer Letter to the Ameriprise address of record  
19 for all Eligible California Investors, and shall be mailed within thirty (30) days of the approval of  
20 the Offer Letter by the Department. The offer communicated in the Offer Letter shall remain open  
21 for ninety (90) days from the date of mailing. Within thirty (30) days of the mailing of the Offer  
22 Letters, Ameriprise shall provide to the Department a list of all Eligible California Investors whose  
23 offers are returned marked as “return to sender” or are otherwise undeliverable (Undeliverable  
24 California Residents). To the extent the Commissioner has access to different mailing address  
25 information for Undeliverable California Residents, Ameriprise agrees to mail a second Offer  
26 Letter to Eligible California Investors within 30 days of California providing such different  
27 address. Eligible California Investors who accept the offer of remediation shall be required to sign  
28 a release in a form approved in advance by the Department, agreeing to waive any further claims

1 against Ameriprise or its agents relating to any violation set forth in this Consent Order giving rise  
2 to the offer of remediation, and agreeing to offset any additional claims relating to identified  
3 transactions by the amount received by this Consent Order. In addition, Eligible California  
4 Investors who still hold the non-traded REIT shares and choose to accept the offer of remediation  
5 must agree to tender their existing shares in the non-traded REIT to Ameriprise or its designee, as  
6 a precondition to receipt of payment by Ameriprise. The offer of remediation shall be in the form  
7 of a credit to an existing Ameriprise account or a check from Ameriprise to the Client as elected by  
8 the Ameriprise client accepting the remediation offer. All Eligible California Investors described  
9 above shall be given notice of and the opportunity to accept Ameriprise's offer of remediation as  
10 set forth in the above paragraphs 7, and 8.

11 9. 180-Day Report. Within one hundred and eighty (180) days of the date of the  
12 Offer, Ameriprise agrees to prepare, and submit to the Department, a report detailing the amount  
13 of funds reimbursed pursuant to the Order, which shall include:

- 14 a. Identification of all offers made;
- 15 b. Identification of all accepted offers;
- 16 c. Identification of any other claims or complaints received by Ameriprise during  
17 the 180-day period concerning the purchase of a non-traded REIT from a purchaser who  
18 resided in California at the time of purchase.
- 19 d. Dates, amounts, and methods of the transfer of funds for all payments of  
20 remediation.

21 10. Extensions of Time. At the request of Ameriprise, the Department may extend, for  
22 good cause shown, any of the procedural dates set forth above.

23 11. Disqualification. This Consent Order is not intended to subject Ameriprise to  
24 disqualification under federal securities laws, rules or regulations thereunder, or the rules and  
25 regulations of any self-regulatory agency, nor the laws, rules or regulations of the various states  
26 and U.S. Territories, including without limitation, any disqualification from relying upon the  
27 registration exemption or the safe harbor provisions. In addition, this Consent Order is not  
28 intended to be the basis for any such disqualifications.

1           12.     Waiver of Hearing Rights. Ameriprise Financial Services, Inc., by and through its  
2 authorized representative, by signing below, agrees to the entry of this Consent Order, and hereby  
3 waives the right to a hearing, and to any reconsideration, appeal, or other right to review which  
4 may be afforded pursuant to the Corporations Code. Ameriprise Financial Services, Inc., further  
5 expressly waives any requirement for the filing of an Accusation that may be afforded by  
6 Government Code section 11415.60 (b), the California Administrative Procedure Act, the  
7 California Code of Civil Procedure, or any other provision of law; and by waiving such rights,  
8 Ameriprise Financial Services, Inc., effectively consents to this Consent Order becoming final.

9           13.     Authority to Execute. Ameriprise Financial Services, Inc., by and through its  
10 authorized representative states that no promise of any kind or nature whatsoever that is not  
11 reflected in this Consent Order was made to it to induce it to enter into this Consent Order and that  
12 it has entered into this Consent Order voluntarily. The undersigned represents that he or she has  
13 been authorized to enter into this Consent Order on behalf of Ameriprise Financial Services, Inc.

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1           14.     Effective Date. This Order shall not become effective until signed by all Parties  
2 and delivered by the Commissioner’s counsel by email to Ameriprise’s Chief Counsel of  
3 Regulatory Affairs at the email address [chris.r.long@ampf.com](mailto:chris.r.long@ampf.com).

4  
5           Dated this 23rd day of July, 2018.

6                               Jan Lynn Owen  
7                               Commissioner of Business Oversight

8                               By: \_\_\_\_\_  
9                               Mary Ann Smith  
10                              Deputy Commissioner  
11                              Enforcement Division

12           Dated this 20th day of July, 2018.

13                               For Ameriprise Financial Services, Inc.

14                              By: \_\_\_\_\_  
15                              Christopher R. Long  
16                              Vice President and Chief Counsel,  
17                              Regulatory Affairs